

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois-American Water Company,)	
American Water Works Company, Inc.,)	
Thames Water Aqua US Holdings, Inc.)	
and Thames Water Aqua Holdings GmbH)	
)	ICC Docket No. 06-0336
Joint Application for Approval of Proposed)	
Reorganization and Change in Control of)	
Illinois-American Water Company Pursuant to)	
Section 7-204 of the Illinois Public Utilities Act.)	

**Response in Opposition of the People of the State of Illinois to
Motion to Strike the Testimony of Michael J. Drey**

Pursuant to 83 Ill. Adm. Code 200.190(e), the People of the State of Illinois, by and through Attorney General Lisa Madigan, submit this response in opposition to Illinois-American Water Company (“IAWC”), American Water Works Company, Inc. (“American Water”), Thames Water Aqua US Holdings, Inc. and Thames Water Aqua Holdings GmbH (collectively, “Joint Applicants”) Motion to Strike the Testimony of Michael J. Drey (“Motion”). The Illinois Commerce Commission (the “Commission”) should deny the Motion because Mr. Drey’s testimony is relevant to the Commission’s evaluation of the proposed reorganization’s impact upon retail customers. In support of this response, the People state the following:

1. On April 21, 2006 the Joint Applicants filed a Petition with the Commission seeking approval of a reorganization pursuant to Section 7-204 of the Illinois Public Utilities Act (the “Act”), 220 ILCS 5/7-204.
2. In reviewing any proposed reorganization, the Commission must find after notice and hearing that the proposed reorganization meet several statutory criteria, including:
 - a. The proposed reorganization will not diminish the utility’s ability to provide adequate, reliable, efficient, safe and least-cost public utility service;

- b. The proposed reorganization is will not significantly impair the utility's ability to raise necessary capital on reasonable terms or maintain a reasonable capital structure.

220 ILCS 5/7-204(b).

- 3. Direct testimony was filed by the Joint Applicants on June 7, 2006.
- 4. The Village of Bolingbrook was granted leave to intervene on July 31, 2006, and filed the Direct Testimony of Michael J. Drey on August 8, 2006.
- 5. Mr. Drey's Direct Testimony describes the utility services IAWC provides to Bolingbrook residents as well as the possible acquisition of IAWC's utility plant which provides services to Bolingbrook residents by several municipalities. Bolingbrook Exhibit 1.0 at 2-3.
- 6. The Joint Applicants filed a Motion to Strike Mr. Drey's testimony on September 8, 2006. In support of the Motion, the Joint Applicants argued that Mr. Drey's testimony is irrelevant to these proceedings because it does not related to any of the standards for Commission approval of a proposed reorganization under Section 7-204 of the Act. Motion, ¶ 7 at 2.
- 7. Contested cases before the Commission follow the rules of evidence applied in civil cases in the Circuit Courts of the State of Illinois. Metro Utility v. Illinois Commerce Com'n, 193 Ill. App. 3d 178, 185, 549 N.E.2d1327, 1331, 140 Ill. Dec. 455, 459 (2nd Dist. 1990); 83 Ill. Adm. Code 200.610.
- 8. The Commission's rules of practice state that the principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision. 83 Ill. Adm. Code 200.25. Further, it is the policy of the

Commission to obtain full disclosure of all relevant and material facts to a proceeding. 83 Ill. Adm. Code 200.340.

9. The Joint Applicants' Motion to Strike is not consistent with the Commission's policy of creating as full a factual record as possible.
10. "Relevant evidence" is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Wojcik v. City of Chicago, 299 Ill.App.3d 964, 971, 234 Ill. Dec. 137, 702 N.E.2d 303, 309 (1998).
11. Mr. Drey's testimony addresses the potential effect of the Joint Applicants' Reorganization on the residents of Bolingbrook. This testimony will assist the Commission in considering whether approval of the reorganization is proper under the Act's statutory criteria:
 - a. Bolingbrook residents receive Lake Michigan water through an IAWC pipeline. IAWC provides wastewater collection for some Bolingbrook residents as well. Bolingbrook Exhibit 1.0, at 2. The proposed reorganization affects the services Bolingbrook residents receive from IAWC. Mr. Drey's testimony describes those services and provides the Commission with information regarding the proposed reorganization's potential impacts upon retail customers. This testimony is directly relevant to Commission consideration of who is best situated to provide safe, reliable and least-cost service to IAWC retail customers in the Village of Bolingbrook in light of the pending sale of IAWC and its parent companies.
 - b. The Village of Bolingbrook is one of several municipalities served by IAWC that have entered into an agreement to investigate all or a portion of IAWC's water

utility assets serving those municipalities. On August 30, 2006, these partners began evaluating bids from engineering firms to conduct a study on the feasibility of purchasing IAWC water utility assets. Bolingbrook Exhibit 1.0, at 2-3. The proposed reorganization directly affects any potential acquisition of IAWC's water utility assets by the Village of Bolingbrook and its partner municipalities. The Drey testimony is relevant to the Commission's evaluation of the proposed reorganization's impact upon the potential market for IAWC's water utility assets and upon other sources of funding and capital for IAWC.

- c. AG Witness Scott Rubin submitted Direct Testimony stating that it is unlikely that the proposed Initial Public Offering ("IPO"), the direct consequence of the proposed reorganization, will help IAWC, or its parent company AWW, address the operational and financial challenges which are the reason for the proposed reorganization. AG Exhibit 1.0, at 12. Mr. Drey's testimony lists several factors relevant to whether the Village of Bolingbrook is well positioned to provide reliable and least-cost utility service to Bolingbrook residents and address the operational and financial challenges facing IAWC. Bolingbrook Exhibit 1.0, at 3 (discussing Bolingbrook's service capabilities). His testimony also shows the strong interest of the local community in acquiring the plant which IAWC's ultimate owners intend to sell. Bolingbrook Exhibit 1.0, at 3.

12. The Commission adopts a flexible approach and may weigh many factors in determining compliance with the requirements of Section 7-204. In Re SBC Communications Inc., ICC Docket No. 98-0555, 1999 WL 1331303, FN1, (Sept. 23, 1999), Concurring Opinion of Chairman Richard L. Mathias. The Commission considers the manner in which the

proposed asset transfer and reorganization has been structured, the capital structure resulting, and the continuing ability of a company to raise capital in the same manner if the reorganization were approved. Central Illinois Public Service Company, Union Electric Company, Petition for Approval of Transfer of Gas System Assets and Gas Public Utility Business and for Approval of Entry into Various Agreements, ICC Docket No. 03-0657, Final Order at 14 (September 22, 2004).

13. Mr. Drey's testimony directly addresses several statutory criteria the Commission must consider in evaluation the proposed reorganization. The information in his testimony will tend to establish the factual consequences of the proposed reorganization upon a potential source of capital for IAWC and upon an IAWC service area.

THEREFORE, the Joint Applicants' Motion to Strike should be denied.

Respectfully submitted,

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Date: September 15, 2005